

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**BENNY HO and SONG HO,**

**Plaintiffs,**

**v.**

**Case No: 6:23-cv-1766-CEM-EJK**

**CLEAR BLUE INSURANCE  
COMPANY,**

**Defendant.**

**ORDER**

This cause comes before the court on Defendant, Clear Blue Insurance Company's Motion to Abate Litigation and Compel Appraisal (Doc. 11), filed September 19, 2023, and the parties' Joint Motion for Appraisal and to Abate All Proceedings Pending Completion of Appraisal filed September 27, 2023 (Doc. 16) (the "Motion"). Upon consideration, the parties' Joint Motion is due to be granted for the reasons set forth below.

**I. BACKGROUND**

This diversity case arises out of an insurance policy ("Policy") issued by Defendant to Plaintiffs that provided insurance coverage for Plaintiffs' property located at 4572 Canard Road, Melbourne, Florida 32934. (Doc. 1-4 at 7–68) The Complaint alleges a claim for breach of contract, asserting Defendant breached the Policy by failing to pay "physical damages caused by wind created breach . . . and ensuing water and mold losses[.]" (Doc. 1-4 at 4 ¶ 7.) Defendant does not dispute

coverage for the property damage loss. (Doc. 11 at 2.) Instead, Defendant disputes Plaintiffs' alleged amount of damages. (*Id.*)

## II. DISCUSSION

The parties request that the Court direct the parties to proceed with appraisal, and stay the litigation pursuant to the following appraisal provision in the Policy:

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss. Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

(*See* Doc 1-4 at 29.)

According to Florida law, "[w]hat is appraised and whether a party can be compelled to appraisal depend on the contract provisions." *Citizens Prop. Ins. Cor. v. Casar*, 104 So. 3d 384, 385 (Fla. Dist. Ct. App. 2013). When the parties have agreed to appraisal, a motion to compel should be granted. *See id.* Florida law "is clear that issues of coverage and liability under an insurance policy are for the court or jury respectively, whereas a dispute regarding the amount of loss found to be covered under

the policy is subject to appraisal if so provided in the insurance policy.” *State Farm Florida Ins. Co. v. Hernandez*, 172 So. 3d 473, 476 (Fla. Dist. Ct. App. 2015). Since the parties’ dispute concerns the amount of loss, not coverage, a stay of litigation is appropriate to allow the parties to proceed with appraisal pursuant to the terms and conditions of the Policy and this Court’s Order.

### **III. CONCLUSION**

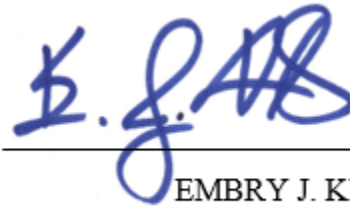
Accordingly, it is hereby **ORDERED** the Motion is **GRANTED** as follows:

- a) The parties are **DIRECTED** to proceed with appraisal pursuant to the terms and conditions of the Policy to determine the amounts of the loss at issue. The appraisal must be completed within **90 days** of its commencement.
- b) The parties are further **DIRECTED** to name its appraisers on or before **October 31, 2023**. The appraisers must choose an umpire within **10 days** of being selected.
- c) The Court reserves jurisdiction to appoint an umpire, upon motion of the parties, if the appraisers cannot agree on the selection of an umpire.
- d) The Court further reserves jurisdiction to determine Plaintiffs’ entitlement to attorney’s fees.
- e) This matter shall be **STAYED**, including all discovery, until the appraisal is completed, or until further order of the Court.

f) Defendant, Clear Blue Insurance Company's Motion to Abate

Litigation and Compel Appraisal (Doc. 11) is **DENIED AS MOOT**.

**DONE** and **ORDERED** in Orlando, Florida on October 11, 2023.

A handwritten signature in blue ink, appearing to read "E. J. Kidd", is written over a horizontal line.

EMBRY J. KIDD  
UNITED STATES MAGISTRATE JUDGE